IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE CIVIL JURISDICTION

WRIT PETITION NO.4852 OF 2005

Laxmichand H.Jain and others).. Petitioners

Versus

Smt.Kantadevi w/o Motiram Gopal Sahai)
and another).. Respondents

Ms.Gauri Godse i/b.M/s.A.V.Jain Associates for the Petitioners.

Mr.I.A. Bagaria for the Respondents.

CORAM: SMT.NISHITA MHATRE, J.

DATED: 31ST AUGUST 2005

P.C.:

. This Petition challenges the concurrent findings of fact of both the Courts below decreeing the Suit on the ground of acquisition of suitable alternate accommodation. The order dated 7th June 2005 passed on Interim Notice for amendment of the pleadings is also challenged.

2. In my view, no interference is called for as the Courts below have concurrently held that the tenant had acquired suitable alternate accommodation and, therefore, the Suit was required to be decreed. The case of the Petitioners is that Petitioner No.1’s son continued to reside in the premises along with Petitioner No.2 who is

the nephew of Petitioner No.1 and, therefore, the Suit ought not to have been decreed. The trial Court has considered the evidence and after an elaborate discussion has found that a case has been made out by the landlords that a suitable alternate accommodation has been acquired by the tenant. The Appellate Court has confirmed these findings.

3. It is submitted by the learned Advocate for the Petitioner that the Interim Notices Nos.5358 of 2003 and 5083 of 2004 for permission to lead additional evidence and for amending the Written Statement ought not to have been discharged. The common order passed on these Notices has not been impugned in this Petition. The Appellate Court has given justifiable reasons for discharging the Notices. No interference is called for. Hence, Petition rejected.

4. Stay granted by the Appellate Court extended for eight weeks from today on filing the usual undertaking within two weeks.